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JOSEPH F. SPANKO, JR.
CLERK

IN THE

Supreme Court of the United States

EAST PRINCE FREDERICK CORPORATION,

Petitioner,

v.

BOARD OF COUNTY COMMISSIONERS OF
CALVERT COUNTY, MARYLAND,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI
FROM THE DECISION OF THE
COURT OF APPEALS OF MARYLAND
(WILLIAM H. ADKINS, II, Judge)

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QUESTION PRESENTED

Must a government make an independent showing of necessity or reasonableness in modifying the terms of an existing contract, when evidence on that issue has already been placed in the record by one challenging the modifications?

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TABLE OF AUTHORITIES

U.S. Trust Co. of New York v. New
Jersey, 431 U.S. 1; 97 S.Ct.1505, 52
L.Ed. 2d. 92 (1977)
Allied Structural Steel Co. v. Spannaus,
438 U.S. 234, 57 L.Ed.2d 727 (1978)

OPINIONS BELOW

1. East Prince Frederick Corporation v. Board of County Commissioners of Calvert County, Case No. CA87-295 in the Circuit Court for Calvert County, Maryland.

2. Board of County Commissioners of Calvert County, Md. v. East Prince Frederick Corporation, 80 Md.App. 78, 559 A.2d 822 (1989)

3. East Prince Frederick Corporation v. Board of County Commissioners of Calvert County Maryland, 320 Md. 178, 577 A.2d 27 (1990)

GROUND'S OF JURISDICTION

The Respondent adopts the
Petitioner's Jurisdictional statement.

CONSTITUTIONAL PROVISIONS AND
REGULATIONS

Set forth in Petitioner's Appendix,
adopted here as a joint appendix.

STATEMENT OF THE CASE

In 1978 the Petitioner's predecessor in interest paid an \$11,000 fee and reserved 4,400 gallons of sewer capacity from the Respondent's predecessor in interest, with no time limitation to usage of the allocation. Subsequently, a new sewerage allocation policy was adopted in Calvert County Resolution Resolution 37-83, later replaced by Resolution 60-86. These policies required allocation holders to begin using their reserved allocations within two years or pay minimum user

fees. Failure to pay the minimum fee could result in loss of the allocation.

Petitioner challenged the application of these resolutions to it in a complaint for Declaratory Judgment, set forth at A-50 of Petitioner's brief. Hearing was held at which the Petitioner called the chief of the county's water and sewer division as its own witness and respondents called no witnesses, the facts which the Respondent wished to present having been offered by the Petitioner's witness. In its opinion, (A-12), the Circuit Court held that the resolutions impaired the Petitioner's contract rights and were not reasonable and necessary to accomplish an important public purpose.

On appeal, the Court of Special Appeals, basing its ruling on the

evidence presented by the Petitioner, reversed, finding that any impairment was not substantial, but that even if it were, the county's policy was reasonable and necessary to serve an important public purpose. (A-19) The Court of Appeals affirmed this opinion (A.61), ruling that, although the Respondent had not presented evidence, there was sufficient evidence of reasonableness and necessity in the record as a whole.

ARGUMENT

This case presents no issues worthy of review by the Supreme Court. The appeals courts reviewing this case have been faithful to the standards set by the Supreme Court. Their decisions, and the tests they used in arriving at those decisions, are consistent with those standards.

All parties, and the courts below, agree that the applicable legal standard to be applied in this case is that established by U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S.Ct. 1505, 52 L.Ed.2d 92 (1977). That case established that, in measuring the constitutionality of impairing one of the state's own contracts, the courts should not give complete deference to the state, but rather determine first, is there a contract, second, has it been substantially impaired, and third, was the impairment reasonable and necessary to accomplish an important public purpose.

In analyzing the case at bar by these standards, it is important to keep in mind the factual differences between it and U.S. Trust. There, the

impairment was strictly a revenue measure, a diversion of funds from the Port Authority to other mass transit projects only tangentially related to the purpose of the existing contract. Here, on the other hand, we have a modification of contract terms in an area (water and sewer) highly regulated by government. By undisputed testimony, it was motivated by the heavy demand for limited sewer capacity, and the need to raise anticipated revenues necessary to operate a system large enough to accomodate the Petitioner's reserved capacity. This modification was to benefit directly the system which was the subject of the contract, not, as in U.S. Trust, to provide revenue for an unrelated project.

The Petitioner asserts that the Court of Appeals departed from appropriate standards of review by failing to require that the Respondent prove affirmatively, by production of its own evidence, that the modification was reasonable and necessary. The Petitioner itself produced undisputed testimony on the issue. It would be an absurdity to argue that the Respondent must produce that same evidence in rebuttal to Petitioner's case or the modification will fail. As the Court noted, "We accept that Calvert County bore some burden with respect to evidence of reasonableness and necessity....But that burden, could be sustained by evidence in the record, even if the evidence was produced by

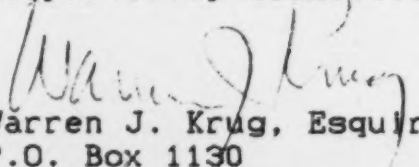
EPF. The evidence in the record is uncontradicted." (A87)

The Petitioner also argues that the Respondent should have been required to offer affirmative evidence that there was no reasonable alternative to this modification available. U.S. Trust stated, at 29-30, that "[A] state is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well." By the courts' determination, in accordance with the standards set by this Court, there was no drastic impairment, nothing like the "completely unexpected liability in potentially disabling amounts" of Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 98 S.Ct. 2716, 57 L.Ed.2d 727.

The conclusions drawn by the appeals courts below in this case were fully supported by the record, not, as Petitioner asserts, by inferences from outside the record. Further, these conclusions follow the standards of review established by this Court.

This case offers no judicial interpretations that conflict with those of the majority of the Supreme Court. The opinion of the Maryland Court of Appeals should be affirmed, and the requested writ of certiorari denied.

Respectfully submitted,


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